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BOARD OF SUP'RS OF LOUISA COUNTY *v.* PROFFIT et al.

Jan. 20, 1921.

[105 S. E. 666.]

1. Appearance (§§ 20, 24 (1)*)—General Appearance to Contest on Merits Waived Defects in or Absence of Service.—Where defendant made no special appearance to question the sufficiency of service, and filed demurrers challenging the merits of the bill, there was a general appearance, contesting the case on its merits, waiving defects in the manner of service of process or its entire lack.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 674.]

2. Eminent Domain (§ 246 (2)*)—Board of Supervisors Could Dismiss Proceedings before Circuit Court, and Themselves Condemn Land for Road, Subject to Appeal.—The board of supervisors of a county having begun proceedings in the circuit court to acquire lands for a public highway under Code 1919, § 4360 et seq., could dismiss such proceeding and themselves condemn the land under the general road law, subject to appeal to the circuit court and to the Court of Appeals, without infringing any right of the landowner, provided they did not act in bad faith.

Appeal from Circuit Court, Louisa County.

Bill by W. F. Proffit and others against the Board of Supervisors of Louisa County. From decree for plaintiffs, defendants appeal. Reversed, and decree sustaining demurrer to the bill and dismissing the cause entered.

Bibb & Rhodes, of Louisa, for appellants.

Gordon, Gordon & Crank, of Louisa, for appellees.

SOUTHERN RY. CO. *v.* FITZPATRICK

Jan. 20, 1921.

[105 S. E. 663.]

1. Eminent Domain (§ 271*)—Property Owner Entitled to Damages Cause by Flooding by Railroad Embankment.—An adjoining property owner was entitled to maintain an action for damages occasioned by flooding, due to the manner of constructing an embankment by a railroad for its tracks.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 675.]

2. Eminent Domain (§ 112*)—Casting of Cinders and Dirt on Land Is "Damage," within Meaning of Constitution.—The casting of great quantities of smoke, cinders, dust, and dirt by a railroad company on a store and dwelling of an adjoining owner of land is a "damage," within the constitutional provision forbidding the taking or damaging

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.